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EPA--REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the matter of:

Atka Pride Seafoods, Inc.  
Atka, Alaska

Respondent.

Docket No. CWA-10-2006-0090

CONSENT AGREEMENT AND  
FINAL ORDER

I. AUTHORITY

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the U. S. Environmental Protection Agency ("EPA") by Section 309(g)(2)(B) of the Clean Water Act ("the Act"), 33 U.S.C. § 1319(g)(2)(B). The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10 ("Complainant").

1.2. Pursuant to Section 309(g)(1) and (g)(2)(B) of the Act and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA hereby issues and Atka Pride Seafoods, Inc. ("Respondent") hereby agrees to issuance of the Final Order contained in Part V of this CAFO.

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## II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. Respondent owns and operates a seafood processing facility, Atka Pride Seafoods, Inc. ("the Facility"), located in Atka, Alaska.

2.3. The State of Alaska was given an opportunity to consult with EPA regarding the assessment of an administrative penalty against Respondent for the violations that are the subject of this CAFO.

2.4. A concise statement of the factual basis for alleging violations of the Act, together with specific references to the provisions of the Act and implementing regulations Respondent is alleged to have violated, appears in Part III of this CAFO.

## III. ALLEGATIONS

3.1. Section 402 of the Act, 33 U.S.C. § 1342, provides that EPA may issue National Pollutant Discharge Elimination System ("NPDES") permits for the discharge of any pollutant into waters of the United States upon such specific terms and conditions as EPA may prescribe.

3.2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except as authorized by an NPDES permit or other specified statutory sections.

3.3. At all times relevant to this action, Respondent owned and operated the Facility.

3.4. Respondent is a corporation and is a person within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

3.5. Respondent discharged seafood processing wastes from the butchering of seafood from the Facility. Processing wastewater from the butchering of seafood is a "pollutant" which is



1 "discharged" within the meaning of Section 502(6) and (12) of the Act, 33 U.S.C. § 1362(6) and  
2 (12).

3 3.6. Respondent discharged seafood processing wastes from the butchering of seafood  
4 to Nazan Bay, which constitutes "navigable waters" and "waters of the United States" within the  
5 meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

6 3.7. Section IV.B.(2) of the Permit states that: "A permittee covered by the 1995  
7 version of general NPDES Permit No. AK-G52-0000 for seafood processors who submitted its  
8 Notice of Intent (NOI) prior to August 4, 2000, is deemed to have submitted a 'timely' NOI. A  
9 permittee covered by the 1995 version of general NPDES Permit No. AK-G52-0000 who did not  
10 submit an NOI prior to August 4, 2000, must submit an NOI to be authorized under this Permit no  
11 later than 90 days from the effective date of this Permit." The effective date of the Permit was  
12 July 27, 2001.

13 3.8. Section IV.B.(3) of the Permit states that "any discharger who fails to submit an  
14 NOI and/or obtain coverage under this Permit and who discharges seafood wastes to receiving  
15 waters of the United States will be in violation of the Clean Water Act for discharging without an  
16 NPDES permit."

17 3.9. Respondent discharged seafood processing wastes from its Facility into Nazan Bay  
18 from 1998 through 2004. Respondent did not submit an NOI to be covered under the Permit until  
19 January 25, 2005.

20 3.10. Respondent's failure to submit an NOI to be covered under the Permit for six  
21 years, and continued discharge of seafood wastes into the waters of the United States, constitute  
22 numerous violations of the Permit and Section 301 of the Act, 33 U.S.C. § 1311. Consequently,  
23 under Section 309(g)(2)(B) of the Act, Respondent is liable for the administrative assessment of  
24 civil penalties in an amount not to exceed \$11,000 per day for each day during which a violation  
25 continues, up to a maximum of \$157,500.

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1 IV. CONSENT AGREEMENT

2 4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

3 4.2. Respondent neither admits nor denies the specific factual allegations contained in  
4 Part III of this CAFO.

5 4.3. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), taking into account the  
6 nature, circumstances, extent, and gravity of the alleged violations, Respondent's economic  
7 benefit of noncompliance, and other relevant factors, EPA has determined and Respondent agrees  
8 that an appropriate penalty to settle this action is SIXTY-FIVE THOUSAND FIVE HUNDRED  
9 DOLLARS (\$65,500).

10 4.4. Respondent consents to the issuance of the Final Order recited herein, and to  
11 payment of the penalty cited in Paragraph 4.3., within thirty (30) days of the effective date of the  
12 Final Order.

13 4.5. Payment under this CAFO shall be made by cashier's check or certified check,  
14 payable to the order of "U.S. Treasury" and shall be delivered to the following address:

15 U.S. Environmental Protection Agency  
16 Region 10  
P.O. Box 371099M  
17 Pittsburgh, Pennsylvania 15251-6903

18 Respondent shall note on the check the title and docket number of this case.

19 4.6. Respondent shall submit a photocopy of the check described above to:

20 Regional Hearing Clerk  
21 U.S. Environmental Protection Agency  
Region 10  
1200 Sixth Avenue, Mail Stop ORC-158  
22 Seattle, Washington 98101

23 Office of Compliance and Enforcement  
24 Attn: Kimberly Ogle  
U.S. Environmental Protection Agency  
Region 10  
1200 Sixth Avenue, Mail Stop OCE-133  
25 Seattle, Washington 98101



1           4.7.   Should Respondent fail to pay the penalty assessed by this CAFO in full by its due  
2 date, the entire unpaid balance of penalty and accrued interest shall become immediately due and  
3 owing. Should such a failure to pay occur, Respondent may be subject to a civil action to collect  
4 the assessed penalty under the Clean Water Act. In any collection action, the validity, amount,  
5 and appropriateness of the penalty shall not be subject to review.

6           4.8.   Should Respondent fail to pay any portion of the penalty assessed by this CAFO in  
7 full by its due date, Respondent shall also be responsible for payment of the following amounts:

8               a. Interest. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), any  
9 unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of  
10 the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order  
11 contained herein, provided, however, that no interest shall be payable on any portion of the  
12 assessed penalty that is paid within thirty (30) days of the effective date of the Final Order  
13 contained herein.

14               b. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to  
15 Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), should Respondent fail to pay on a timely  
16 basis the amount of the penalty assessed by the Final Order contained herein, Respondent shall  
17 pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection  
18 proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay  
19 persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the  
20 aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the  
21 beginning of such quarter.

22           4.9.   The penalty described in Paragraph 4.3. of this CAFO shall represent civil  
23 penalties assessed by EPA and shall not be deductible for purposes of federal taxes.

1 4.10. The undersigned representative of Respondent certifies that he or she is fully  
2 authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

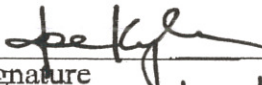
3 4.11. Except as described in Paragraph 4.8. of this CAFO, each party shall bear its own  
4 costs in bringing or defending this action.

5 4.12. Respondent expressly waives any rights to contest the allegations and to appeal the  
6 Final Order contained herein.

7 4.13. The provisions of this CAFO shall bind Respondent and its officers, directors,  
8 agents, servants, employees, successors, and assigns.


9 STIPULATED AND AGREED:

10 Atka Pride Seafoods, Inc.

11  
12   
13 Signature \_\_\_\_\_  
14 Print Name: Joe Kyle  
Title: COO

Dated: March 1, 2006

15 U.S. ENVIRONMENTAL PROTECTION AGENCY  
16 REGION 10

17   
18 Cara Steiner-Riley  
19 Assistant Regional Counsel

Dated: March 16, 2006

V. FINAL ORDER


5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the terms of settlement contained in the Consent Agreement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the particular violations alleged in Part III, above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the Act and regulations and permits issued thereunder.

5.3. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), EPA has published public notice of its intent to assess an administrative penalty against Respondent and has invited public comment in accordance with 40 C.F.R. § 22.45. More than 40 days have elapsed since the issuance of this public notice, and EPA has received no comments concerning this matter.

5.4. This Final Order shall become effective upon filing.

SO ORDERED this 3 day of May, 2006.

  
L. Michael Bogert  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 10



CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER in In the Matter of: Atka Pride Seafoods, Inc., DOCKET NO.: CWA-10-2006-0090** was filed with the Regional Hearing Clerk on May 03, 2006.


On May 03, 2006 the undersigned certifies that a true and correct copy of the document was delivered to:

Cara Steiner-Riley, Esquire  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on May 03, 2006, to:

Atka Pride Seafoods, Inc.  
Aleutian Pribilof Island Community  
Development Association  
234 Gold Street  
Juneau, AK 99801

DATED this 03<sup>rd</sup> day of May 2006.

  
\_\_\_\_\_  
Carol Kennedy  
Regional Hearing Clerk  
EPA Region 10